

In the Matter of	)		
Implementation of Section 621(a)(1) of	)		
the Cable Communications Policy Act of 1984	)	MB	Docket
No. 05-311			
as amended by the Cable Television Consumer	)		
Protection and Competition Act of 1992	)		

These Comments are filed by the Champaign-Urbana (Illinois) Cable Television and Telecommunications Commission in support of the comments filed by the National League of Cities (NLC) and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, the Champaign-Urbana Commission believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Our current franchise began on March 1, 1994, and expires on February 28, 2009. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the

Federal Act. As a result, at this time we are not yet negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City of Champaign in the amount of 3% and the City of Urbana in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. In addition, the franchise with Insight Communications calls for an additional payment of 2% of gross revenues in lieu of maintaining a public access studio. The City of Urbana has chosen to collect that payment, the City of Champaign does not at the current time.

We require the cable operator to provide 4 analog channels for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have two channels devoted to educational access; one channel devoted to government access, and one channel devoted to both public and government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Cable company agrees to place a brochure promoting PEG access twice a year in their customer's cable bills. Brochures are paid for and provided by the cities. Cable company will also insert PEG channel promotional spots (up to 1200 per year) during regular commercial breaks on the system's channels. These promotional spots are produced at the cost of the cities and are inserted free of charge by the cable operator.

During franchise negotiations, the cable operator offered, and the cities accepted, language which would allow the cities to collect a PEG assessment. This assessment could be up to 2% of the cable operator's gross annual revenues and must be used solely for PEG access equipment, facilities, administration, and operations. At this time the City of Urbana does collect the 2% assessment and the City of Champaign does not..

Our franchise contains the following requirements regarding emergency alerts: cable company must provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override capability to permit the cities to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. This override facility becomes even more important as non-local

channel offerings increase. It is the only means to reach viewers not watching a local channel.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

- Full-service, staffed office located physically within our community
- Toll-free telephone capacity to assure at least 95% of all calls are answered by the 4<sup>th</sup> ring and 90% of all callers will not wait longer than 30 seconds before speaking with a service representative.
- Local office must be open during normal business hours and at least 4 hours weekly on evenings or weekends.
- On-call emergency maintenance and repair staff available 24 hours a day.
- Service installations must be completed within 7 days of receipt of order.
- Installations will be scheduled within four-hour time frames.
- System maintenance which interferes with the customer's service should be scheduled between midnight and 6 a.m.
- Provides specific timeframes for repair of cable service issues, based on the number of customers impacted and type of problem.
- Provide rebates to subscribers whose service is interrupted for four hours or more.
- Requires the operator's employees/representatives to wear identification badges.

Our original franchise called for the operator to provide energized trunk to 25% of the franchise area per year for four years. The company was given adequate time to obtain certificates, licenses and permits from the FCC, local utilities and city departments before the clock started. The requirement was met with little difficulty.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

Cable operator shall provide service to any residential dwelling unit within the cities, for which there is a density of at least 35 residential dwelling units per mile (if underground cable plant) or 25 residential dwelling units per linear mile (if aerial cable plant).

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

Our current franchise agreement required the cable operator to upgrade/rebuild the then-existing cable system utilizing a fiber rich nodal architecture with an active bandwidth of 5 MHz to 750 MHz with a capacity of at least 110 NTSC 6 MHz channels. The system was to be made 2-way operational, with an average of 600, and no more than 800, residential dwelling units served per node. Cable operator was granted 3 years to complete the upgrade/rebuild. The cable operator successfully completed this upgrade/rebuild within the allotted time. This requirement was beneficial to both our citizens and the cable operator. Our citizens are now enjoying wonderful capacity, services, and reliability of the upgraded network, and the cable operator is able to maximize the potential of their fiber plant by marketing cable, digital cable, premium channels, dozens of pay-per-view channels, high-speed internet service, and is soon to launch local and long distance telephone services.

Our franchise contains the following insurance and bonding requirements: Cable operator shall maintain policies of liability, workers' compensation and property insurance. Cable operator is to maintain combined single limit coverage applying to bodily and personal injury and death and property damage in an amount not less than two million dollars. Upon franchise adoption, the cable operator was to provide to the cities two performance bonds and two letters of credit. The first letter of credit was for \$300,000 and was used to guarantee the system upgrade/rebuild of the then-existing cable system. Once the rebuild was completed, it was released. The second performance bond and letter of credit guarantees faithful performance of the franchise. This letter of credit started at \$40,000 and was allowed to increase to reflect changes in the Consumer Price Index.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the Public Works Department as well before it may access the public rights of way. Prior to commencing any work in the public rights-of-way the cable operator shall obtain a permit, which is available to the cable operator at no charge.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

Prior to imposing any remedy or sanction against the cable operator, the City shall first provide written notification of the violation and demand correction within a reasonable time. If cable operator fails to correct the violation within the time prescribed, the City will provide at least 10 days notice of a meeting with the City Manager to address the violations. At this meeting the City Manager (Champaign) or City Administrator (Urbana) will consider the positions presented by both sides. If the City Manager/Administrator determines a violation has occurred and the cable operator has not corrected (or diligently commenced to correct) the violations, the City Manager/Administrator may impose the remedies provided in the franchise. These include a fine assessment of \$750 per day, per incident, for unexcused violations of the system upgrade requirements and up to \$150 per day, per incident for all other violations. If the stated violation is not curable within 30 days, the cable operator will not be fined, provided the cable operator provides a plan (within 30 days) to remedy the violation and demonstrates good faith efforts in correcting the violation.

### **The Franchising Process**

The cable system serving our Champaign and Urbana also serves many adjoining communities: Village of Savoy, Village of Bondville, Village of St. Joseph, Village of Ogden, Village of Philo, Village of Homer, and parts of rural Champaign County. In 1994 Champaign and Urbana worked together to jointly renegotiate and in turn issue similar cable franchises to Time Warner Entertainment Company. This allowed the company to quickly obtain franchises in both communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

In the event that the State or Federal Government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the City may, if it so elects, adopt rules, regulations, and ordinances in these areas, to the extent provided in the then applicable law. Cable operator shall comply with such adopted rules, regulations, and ordinances. The cable operator also agrees to maintain all PEG commitments in the franchise even if future legislation or court decisions limit or abrogate the ability of the Cities to require such support for PEG. The franchise also acknowledges that certain parts of the contract may be abrogated by future legislation or court decisions.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: the franchise agreement is monitored by the Champaign-Urbana Cable Television and Telecommunications Commission, a public body which works as an intermediary between citizen complaints and the cable operator. The Commission's work allows the cable operator to quickly respond to and resolve customer complaints, without invoking the formal enforcement provisions of the franchise. The Commission also holds public hearings, hears testimony concerning applications for and renewals of cable franchises, rate increase requests, and related matters.

### **Competitive Cable Systems**

Our community has never been approached by a competitive provider to provide cable television service and has never denied any provider the opportunity to serve in our community. The franchise agreement is nonexclusive and the cities may enter into additional cable television franchise agreements at any time. The cities have mechanisms in place to offer the same or a comparable franchise to a competitor upon request. The cities welcome and encourage companies wishing to offer competitive services to offer same to our citizens.

### **Conclusions**

The local cable franchising process functions well in Champaign and Urbana. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

The City of Champaign worked jointly with the City of Urbana to negotiate our current franchise agreement, a process which we intend to repeat for both franchise renewals and new, competitive entries. By negotiating together, simultaneously, our communities effectively cut the work of the applicant in half, while also protecting the rights of our citizens and meeting the needs of our communities.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Champaign-Urbana Cable Television and Telecommunications Commission therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Richard L. Atterberry  
Chair, Champaign-Urbana

Cable

Telecommunications  
Commission

Television

and

cc: National League of Cities, [leanza@nlc.org](mailto:leanza@nlc.org)  
NATO, [info@natoa.org](mailto:info@natoa.org)  
John Norton, [John.Norton@fcc.gov](mailto:John.Norton@fcc.gov)  
Andrew Long, [Andrew.Long@fcc.gov](mailto:Andrew.Long@fcc.gov)